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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/649,114   | 08/27/2003  | Adrian Sesto         | SLSEST.00001        | 5504             |
| 7590   | 10/19/2005  |                      | EXAMINER            | ELKINS, GARY E   |
| Steven B. Leavitt<br>9914 Waterview Parkway<br>Rowlett, TX 75089 |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 3727                |                  |

DATE MAILED: 10/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                 |               |
|------------------------------|-----------------|---------------|
| <b>Office Action Summary</b> | Application No. | Applicant(s)  |
|                              | 10/649,114      | SESTO, ADRIAN |
|                              | Examiner        | Art Unit      |
|                              | Gary E. Elkins  | 3727          |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-17 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-17 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 20030827.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. Claims 3, 10 and 13-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In each of claims 3 and 10, it is unclear how both the end of the retaining arm and the end of the attaching arm extend upwardly from the planar central member. As shown in the drawings, they extend in opposite directions away from the central member. If one extends upward, it appears that the other must extend downwardly.

In claim 13, line 1, it is unclear how the condom is “having a planar central member having....” as set forth.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 4, 5 and 8 are rejected under 35 U.S.C. 102(e) as being anticipated by Thompson. Thompson discloses a clip 100 including a central planar member 120, a retaining arm 130 and an attaching arm 110 formed as a contiguous unit. No distinction is seen between the claimed clip and that shown in Thompson as a result of the claimed intended use to hold a

personal article, to hold a person article in spring compression, to hold the retaining clip to an article of clothing in spring compression or to hold a packaged condom, i.e. the clip of Thompson is considered capable of being used as claimed.

4. Claims 1, 4, 5 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Cantwell. Cantwell discloses a clip including a central planar member 22, a retaining arm 30 and an attaching arm 40 formed as a contiguous unit. No distinction is seen between the claimed clip and that shown in Cantwell as a result of the claimed intended use to hold a personal article, to hold a person article in spring compression, to hold the retaining clip to an article of clothing in spring compression or to hold a packaged condom, i.e. the clip of Cantwell is considered capable of being used as claimed.

5. Claims 1-5 and 8-11 are rejected under 35 U.S.C. 102(b) as being anticipated by any one of Perry (fig. 3 emb), Wise (fig. 8 emb) or Deane (fig. 7 emb). Each of Perry, Wise and Deane discloses a clip including a central planar member (12; 30; 11, respectively), a retaining arm (11; 26; 10, respectively) and an attaching arm (16; 32; 25, respectively) formed as a contiguous unit. No distinction is seen between the claimed clip and that shown in any one of Perry, Wise or Deane as a result of the claimed intended use to hold a personal article, to hold a person article in spring compression, to hold the retaining clip to an article of clothing in spring compression or to hold a packaged condom, i.e. the clip in any one of Perry, Wise and Deane is considered capable of being used as claimed.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 6, 7 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over any one of Perry, Wise or Deane, each in view of any one of Kaufman, Wisniewski or Henry. Each of Perry, Wise and Deane discloses all structure of the claimed clip except formation of a dimple on the retaining arm. Each of Kaufman, Wisniewski and Henry teaches that it is known to provide a retaining arm on a holder with a dimple to increase the frictional contact and thus better retain the article. It would have been obvious to make the retaining arm in any one of Perry, Wise or Deane with a dimple as taught by any one of Kaufman, Wisniewski or Henry to facilitate increasing the frictional retention of the held article.

***Allowable Subject Matter***

8. Claims 13-17 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

***Conclusion***

The remaining cited prior art is illustrative of the general state of the art.

In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses in Office Actions to (571)273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by Applicants who authorize charges to a PTO deposit account. Please identify the Examiner and art unit at the top of your cover sheet.

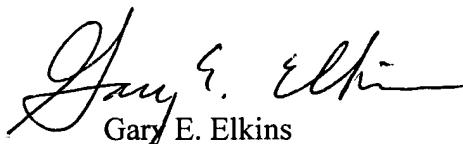
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

Art Unit: 3727

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. Also, copies of an office action or other file information may be obtained from the Private PAIR system. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions regarding access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Gary Elkins at telephone number (571)272-4537. The Examiner can normally be reached Monday through Thursday.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Nathan Newhouse can be reached at (571)272-4544.



Gary E. Elkins  
Primary Examiner  
Art Unit 3727

gee  
17 October 2005